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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**Celeste M. Moy**  
Vice President  
Deputy General Counsel

March 13, 1996

Mr. William F. Canton, Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: MM Docket No. 92-266 -- Ex Parte Presentation

Dear Mr. Canton

This is to provide notice, pursuant to Section 1.1206(a)(1) of the Commission's Rules, that copies of the enclosed letter were forwarded today to Chairman Reed Hundt and to each of the other individuals identified as receiving copies. Each of the foregoing also received a copy of this letter. Two copies of the letter are enclosed for inclusion in the above-referenced docket.

If you have any questions regarding this matter, please contact me.

Very truly yours,

Celeste M. Moy

Enclosure

CMM:dhk

**Black Entertainment Television, Inc.**

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Robert L. Johnson  
Chairman  
CEO

March 13, 1996

**EX PARTE PRESENTATION**

Chairman Reed E. Hundt  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, DC 20554

Re: Revisions to Leased Access Rules/  
Petition for Reconsideration in MM Docket No. 92-266

Dear Chairman Hundt:

It has come to my attention that the Commission is considering a revision of its existing leased access rules which may significantly change the pricing for and usage of leased access channels. As Chairman and CEO of BET Holdings, Inc., the parent company of Black Entertainment Television, Inc., I am deeply concerned that adoption of the proposed revisions will adversely affect the availability of programming services provided by BET, its affiliates and subsidiaries, to cable viewers.

BET provides cable operators and other multichannel video programming distributors the following programming services which target the interests and concerns of African-Americans: BET Cable Network, BET Action Pay-Per-View and BET On Jazz, which was only recently launched. Although the BET Cable Network has achieved widespread distribution and is available to more than 40 million subscribers, BET must continue to work aggressively to expand the distribution of these and other programming services it develops. However, a shortage of channel capacity has often frustrated our best efforts.

The Commission acknowledged the existing shortage of channel capacity in its most recent review of the cable industry, by noting that during 1994 "average channel capacity increased slightly."<sup>1</sup> Obviously, any increase in the number of channels which cable operators must devote to leased access because of subsidized pricing resulting from the Commission's

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<sup>1</sup> Second Annual Report in CS Docket No. 95-61, FCC 95-491 (rel. Dec. 11, 1995), at par.17. In fact, the percentage of cable systems with thirty or more channels increased by a single percentage point. Id. In contrast, the number of cable programming choices continued to expand rapidly -- "[o]verall, the number of programming networks increased by over 26.7%, from 108 to 128." Id. at par. 19.

**BET Holdings, Inc.**

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proposed revision of the lease accessed rules, would only exacerbate this problem and require cable operators to drop programming services presently available to and desired by viewers, such as those services offered by BET.

It is my understanding that the proposal before the Commission would eliminate the current highest implicit fee pricing mechanism for leased access channels and substitute in its place a proxy for "opportunity cost", which would reimburse cable operators only for the lost advertising and/or commission revenues associated with channels supplanted by leased access channels, and any additional extraordinary administrative and technical costs associated with carrying leased access channels. If, however, the supplanted channels do not include advertising or home shopping programming, the access costs for BET's leased access competitors could be negligible. In such event, cable operators, subscribers and other programmers would be, in effect, subsidizing the cost of access for other commercial programmers. We believe that this kind of proposed pricing mechanism would place existing programmers such as BET, which depend upon both subscriber and advertiser revenues, at a substantial competitive disadvantage.

The proposal before the Commission appears to be premised upon the wholesale removal of existing programming services in favor of subsidized leased access services such as infomercial/retailing services and low-power television stations which do not qualify for carriage under the Commission's must-carry rules. Thus, the Commission's "opportunity cost" pricing mechanism is based upon lost revenues from dropped services. Additionally, the present draft proposal would require cable operators to identify those existing programming services which would be dropped to satisfy their respective leased access allotments. Such identification would only increase the uncertainties of carriage faced by existing programmers.

Please keep in mind that the Commission also has acknowledged that cable programmers have been injured as a result of rate regulation -- an unintended effect which the Commission has attempted to remedy over time. Nonetheless, before the Commission adopted its revised "going-forward rules," few cable operators added new programming services to their channel line-ups. New launches were delayed, abandoned or, at best, fell far short of projections. Moreover, rate regulation limited a cable operator's ability to invest in upgrades and channel expansion plans, which was further hindered by technological problems and delays. BET has had first-hand experience with such unintended consequences of rate regulation when the cumulative effects and costs of the regulation were a substantial contributing factor to the delay in our launch of BET On Jazz.

Now, when it finally appears that cable programmers can compete for carriage and viewers in a stable regulatory framework, the Commission apparently is considering a change which could have drastic negative effects on and reintroduce widespread uncertainty among programmers. Cable programmers must make substantial programming investments based on informed projections--commitments which programmers cannot ignore with each change in regulations. Likewise, cable programmers cannot recoup or easily rebuild the goodwill which they developed with viewers through carriage and ongoing promotion when they are summarily dropped.

BET is mindful that ValueVision's petition for reconsideration has been pending for sometime, and the Commission's recent representations to the Court of Appeals in response to ValueVision's petition for a writ of mandamus that the Commission "expects to take up ValueVision's petition for reconsideration shortly." I respectfully submit, however, that if the Commission was to decide ValueVision's petition on the current record, it should and must deny that petition in all respects. If the Commission believes that there is any merit to the revisions proposed by the Commission's staff, it should publish a specific proposal upon which programmers, cable operators and viewers may comment. Absent a formal proposal which can be reviewed and considered by all interested parties, BET cannot provide the kind of detailed factual and empirical analysis necessary for the Commission to make the policy judgments presented by such proposal.

This is a matter I firmly believe could have serious adverse impact on BET specifically, and other cable programmers in general, causing a significant decrease in programming diversity, which is the exact opposite of the result intended by Congress and the Commission. When reviewing such matters, it is BET's hope that the Commission will look for ways to increase channel capacity thereby promoting program diversity in the cable industry. I appreciate your careful consideration of BET's views with respect to revising the Commission's leased access rules, and I would be pleased to discuss them with you in more detail subject to the Sunshine period prohibition.

Warm regards,

  
Robert L. Johnson

RLJ:dhk

cc: Commissioner James H. Quello  
Commissioner Andrew C. Barrett  
Commissioner Rachelle B. Chong  
Commissioner Susan Ness  
Jackie Chorney, Legal Assistant to Chairman Hundt  
Maureen O'Connell, Legal Advisor to Commissioner Quello  
Lisa B. Smith, Legal Advisor to Commissioner Barrett  
Suzanne K. Toller, Legal Advisor to Commissioner Chong  
Mary P. McManus, Legal Advisor to Commissioner Ness  
William F. Caton, Secretary (2 copies)